CONSTITUTIONALITY OF THE TORRENS SYSTEM OF LAND TITLE REGISTRATION. —The courts of a number of the states have been called upon to pass upon the constitutionality of the so-called Torrens system of registering land titles. In the following cases: *Title, etc. Restoration Co.* v. *Kerrigan,* 150 Cal. 289, 88 Pac. 356, 119 Am. St. Rep. 199, 8 L. R. A. (N. S.) 682; *People* v. *Simon,* 176 Ill. 165, 52 N. E. 910, 44 L. R. A. 801, 68 Am. St. Rep. 175; *State* v. *Westfall,* 85 Minn. 437, 89 N. W. 175, 57 L. R. A. 297; *Tyler* v. *Judges,* 175 Mass. 71, 55 N. E. 812, 51 L. R. A. 433; *People ex rel.* v. *Crissman,* 41 Colo. 450, 92 Pac. 949, the system has been held constitutional. On the other hand in Ohio and Illinois the acts under consideration were held unconstitutional. *State* v. *Guilbert,* 56 Ohio St. 575, 47 N. E. 551, 60 Am. St. Rep. 756, 38 L. R. A. 519; *People* v. *Chase,* 165 Ill. 527, 46 N. E. 454, 36 L. R. A. 105. A very recent decision of the United States Supreme Court is of special interest because that court held constitutional a California act which to all intents and purposes is a Torrens act. *American Land Co.* v. *Zeiss* (1910), 31 Sup. Ct. 200.

In that case, the court considered the constitutionality of a law enacted by the legislature of California in June, 1906, which provided for the registering of land titles in those places where the earthquake and fire of that year had destroyed the public land records, by a method similar to that of the Torrens act of that state (Code Civ. Pro., §§ 749-751), except that it did not require an abstract of title to be filed with the petition, that being impossible under the circumstances.

The act was attacked on the ground that it deprived persons of property without due process of law, contrary to the Fourteenth Amendment to the Federal Constitution. The court, speaking through Chief Justice WHITE, in upholding its constitutionality, divided the question as follows: (a) the authority of the state to deal with the subject with which the statute is concerned, and (b) upon the hypothesis of the existence of power, the sufficiency of the safeguards provided in the statute.

In regard to the former the court held that as it is indisputable that the general welfare of society is involved in the security of titles to real estate and in the public registry of such titles, it is obvious that the power to legislate as to such subjects inheres in the very nature of government. This being true, it follows that the government possesses the power of remedying the confusion and uncertainty as to registered titles arising from a disaster such as took place in California in 1906.

As to the adequacy of the safeguards which the statute provides, it was held that the statute not only requires a disclosure by the petitioner of all known claimants and service upon them, but moreover, it contains words of limitation to the effect that no one not in the actual and peaceable possession of property, either personally or through an agent, can maintain the action which it authorizes. To argue, say the court, that the provisions of the statute are repugnant to the due process clause because a case may be conceived in which rights in and to property would be adversely affected without notice being actually conveyed by the proceedings is in effect to deny the power of the state to deal with the subject. The criterion is not the

possibility of conceivable injury, but the just and reasonable character of the requirements, having reference to the subject with which the statute deals. The laws of a state come under the prohibition of the Fourteenth Amendment only when they infringe fundamental rights. The law cannot give personal notice of its provisions or proceedings to every one. Of what concerns or may concern their real estate, men usually keep informed, and on that probability the law may frame its proceedings. *Ballard* v. *Hunter,* 204 U. S. 241, 51 L. ed. 461, 27 Sup. Ct. 261.

In Ohio the act which was declared unconstitutional in *State ex rel.* v. *Guilbert,* supra, as taking property without due process of law, did not provide that a person known to claim a title to the land adversely to the petitioner need be named in the application or notice, nor that he receive a copy of the notice even though his place of residence be known and within the county. The court, in passing upon the act, held that to authorize a court to determine the adverse claims of parties touching their rights in things, judicial process is indispensable. In Illinois an early law (Laws of 1895), page 107) was declared unconstitutional in *People* v. *Chase,* supra, which held that the act conferred judicial powers upon the registrar of titles contrary to the constitution requiring a division of powers. Under that act the entire proceedings were had before the registrar, who passed upon all claims which were had against the estate, and settled them. The statute under consideration in the principal case, as well as those of other states which have stood the test of the courts, does not contain the clauses which were objectionable in the Illinois and Ohio laws. In the former the petitioner is required to name all the adverse claimants whom he knows, and to serve them with notice, while the proceedings are conducted in either a court of chancery or a special court.

Almost every conceivable objection to these laws has been urged in the different courts, for among those seeking to make the laws void we find the powerful interest of the Title Insurance Companies, whose very existence is threatened by the enactment of these statutes. The different acts being on the whole very similar, it is interesting to note some of the points which were raised against them. The contention argued in the principal case, that the act deprived one of property without due process of law, was argued in nearly every one of the above mentioned cases and for the most part was settled in much the same manner. In regard to that contention Chief Justice HOLMES in *Tyler* v. *Judges,* supra, said that if the notice does not satisfy the constitution, a judicial proceeding to clear titles against all the world is hardly possible, for the very object of such a proceeding is to get rid of unknown as well as known claims—indeed, certainty against the unknown may be said to be its chief end—and unknown claims cannot be dealt with by personal service upon the claimant (citing *Arndt* v. *Griggs,* 134 U. S. 316 and *Hamilton* v. *Brown,* 161 U. S. 256).

It was contended against a statute passed in Illinois after the case of *People* v. *Chase,* supra, had declared the former act invalid, that by the proceedings subsequent to the initial registration, an owner might be deprived of his property without due process of law. *People* v. *Simon,* supra. The

court held that the right to alienate or inherit property is always dependent upon the law, and the state has the absolute power to regulate the tenure of real property within its limits and the modes of the acquisition and transfer thereof. In this case, also, it was contended that the duties of the registrar were judicial in nature in the proceedings after the initial registration, but the court held that even though they might be quasi-judicial they were only the duties of the ordinary registrar in a land office.

It is interesting here to notice that in a California case, *Title etc. Restoration Co.* v. *Kerrigan,* supra, in which the same statute was under consideration that is considered by the principal case, it was argued that the entire proceeding of registering titles is not a judicial act but an administrative proceeding and therefore contrary to their constitution. The court in that case held that whenever the law confers a right, and authorizes an application to a Court of Justice to enforce that right, the proceedings under such application are to be regarded as of a judicial nature (citing *Cooper's Case,* 22 N. Y. 67).

In the Colorado case, *People* v. *Crissman,* supra, it was claimed that by having an examiner examine the title and report, before the hearing is had, the case is partially tried and disposed of by the court before persons adversely interested are brought into court and made parties to the proceeding, but it was held that the report of the examiner was in no way binding upon the court in the hearing of the cause. In the same case it was further objected that the act was invalid in that no judgment could be rendered in favor of a defendant regardless of the showing made, and in the Minnesota case, *State* v. *Westfall,* supra, it was urged that the act was unconstitutional in that it conferred the power of appointment of an examiner upon the judge. Many other minor objections might be mentioned, but it is sufficient to say that undoubtedly now that the Supreme Court of the United States has passed upon the constitutionality of the so-called Torrens act, that phase of the law will not further be disputed, and it will pave the way for the enactment of such a law by other states.

It may be interesting to note that in chapter 627 of the Laws of 1910 there is found a complete method of registering land titles in the state of New York. See Article XII of the Real Property Law as thus amended.

L. F. M.